

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1209 of 1983

With

CROSS OBJECTION (Stamp No. 5971 Of 1984)

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and
MR.JUSTICE S.D.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

ORIENTAL FIRE & GEN.INSU.CO.LTD.

Versus

VORA FATMABI SABIR AHMED

Appearance:

MR RAJNI H MEHTA for Petitioner
MR MC BATT for Respondent No. 1
MR IS SUPEHIA for Respondent No. 7
MR RM JOSHI for Respondent No. 8, 9

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE S.D.DAVE

Date of decision: 13/09/96

ORAL JUDGEMENT

Per: S.D.Dave, J:-

Regard being had to the Supreme Court

pronouncement in New India Assurance Co.Ltd..Appellant Versus Mandar Madhav Tambe And Others... Respondents. (1996) 2 SCC, pg. 328, the present Appeal filed by the appellant Insurer requires to be allowed. We should say at the same time, the Cross Objections filed by the original claimants require to be recognised and allowed.

The heirs & legal representatives of deceased Sabir Ahmed had approached the Motor Accident Claims Tribunal, Banaskantha at Palanpur, by filing MAC Petition No. 75 of 1981 for claiming the total compensation in sum of Rs.1,10,000-00. The case of the original claimants was that the deceased Sabir Ahmed was a pillion rider on a scooter which was being driven by the original opponent no.1 Akramkhan Pathan, who figures as respondent no.7 in the present appeal. The Tribunal on the appreciation of the evidence on record has made an award in sum of Rs.43,400-00 against all the four respondents.

The contention coming from learned counsel Mr. Ajay Mehta for the appellant before us is that, as per the case put forth by the claimants themselves, which has been recognised by the Tribunal, the deceased Sabir Ahmed was travelling as pillion rider upon a two wheeler which was being driven by original opponent no.1 Akramkhan Pathan, who was not holding a valid licence to drive. It appears that this was the case of the claimants and the same has been recognised by the Tribunal. Upon a careful analysis and study we are not in a position to take a different view. A different view, according to us does not appear to be permissible, because of the simple fact that, this is the case of the claimants before the Tribunal. It shall therefore have to be appreciated that, the vehicle was being driven by the original opponent no.1 Akramkhan Pathan. The evidence goes to show that he had no valid licence to drive. The principle laid down by the Supreme Court in case of New India Assurance Co. Ltd. (supra) comes into play. The decision has been rendered by the Apex Court regard being had to the Exclusion clause in insurance policy specifically providing that person driving the vehicle must hold a valid driving licence or a permanent driving licence other than learner's licence. The facts of the case on hand are not different. On the contrary they are exactly similar. The policy of insurance which was presented before the Tribunal, in the column " Driver : Any of the following:" reads as under:

" (a)... The Insured may also drive a Motor Cycle not belonging to him and not hired to him under a Hire Purchase Agreement.

(b)... Any other person who is driving on the Insured's order or with his permission provided that the person driving holds a valid driving licence at the time of the accident or had held a permanent driving licence (other than a learner's licence) and is not disqualified from holding or obtaining such a licence. "

This exclusion clause in the policy of insurance would go to show that, the insurer would not be liable to satisfy the award if the person driving the vehicle was not holding a valid licence to drive the vehicle at the relevant time. It is not disputed before us that, the driver of the scooter, that is original opponent no.1 Akramkhan Pathan was not holding a valid licence to drive at the relevant time. Because of this the appeal filed by the appellant shall have to be allowed. We order accordingly.

The resultant effect would be that, though the award made by the Tribunal would be subsisting against rest of the original opponents, the same shall have to be deleted so far as the present insurer is concerned. The award shall stand modified accordingly.

The Tribunal has awarded the total compensation in sum of Rs.43,400-00 together with the interest at the rate of 6 % per annum from the date of application till realisation. Learned counsel Ms. Dave for the original claimants urges that the assessment made by the Tribunal appears to be a parsimonious one and requires upward modification. The claim by way of cross objections is limited to an amount of Rs.15,000-00 only. The deceased was working as a helper or assistant at a pan-bidi galla. His income has been taken at the rate of Rs.300-00 per month only. Regard being had to the nature of the work and the income which the deceased might be getting by doing the above said job, we are of the opinion that the assessment made by the Tribunal does not appear to be on the correct side and it calls for an upward modification. Even if an amount of Rs.100 or 200/- is added to the income, the award would go much higher. In view of this position we are of the opinion that the cross objections require to be allowed by saying that, there should be an addition of an amount of Rs.15000-00 in the award made by the Tribunal. The claimants should get this amount from the original opponents, excepting the original opponent no.3 insurer (the Appellant in First Appeal No. 1209 of 1983), together with the interest at the rate of 12 % per annum from the date of the application till the

realisation.

The award therefore shall stand modified in this respect also.

Learned counsel Mr. Mehta for the appellant insurer says that, as per the award made by the Tribunal, an amount of Rs.5000-00 has been paid each to the original claimants No. 1 & 6 but the remaining amount has been deposited in the fixed deposit receipt. The appellant shall be entitled to have the above said deposited amount after the discharge of the above said fixed deposit receipts, which should be done forthwith.

There shall be no costs so far as the appeal is concerned. Cross objections shall carry the usual costs with them.
